Secl. II-27—45,000—15-11-35.

Home (1936) Department.

Jus SERIES.

G.O. No. 1127

DATED 26-6-36

[Despatch Abstract.]

Criminal Appeal:-

Appeal against acquittal - C.C.No.3 of 1936 on the file of the Sub-Divisional Magistrate, Coondapoor - Declined.

C.F. 30.

HOME DEPARTMENT.

Received 8-JUN-1936 19 Registered Home 1166 E 8.6.36 19

Subject.

Criminal Justice - C.C. 3/36 on the file of the Sub Divisional Magistrate, Coondapoor - Acquittal of the accused - Appeal.

ENCLOSURES.
No.
Spare copies

No. Ref.C.1-1624-M-36.

Station Karkal, Dated the 5th June 1936

From (Name) Khan Bahadur Muhammad Humayun Saheb Bahadur, B.A.,
(Designation) District Magistrate of South Kanara.

To The Secretary to the Government of Madras,
Home Department,
Madras

Sir,

I request that Government may be pleased to sanction the filing of an appeal against the acquittal of the accused by the Sub Divisional Magistrate, Coondapoor in C.C. 3/36 on his file.

2. I submit a copy of the judgment in the case. The accused, a motor driver, was charged with the offence of --- causing death by rash or negligent act not amounting to --- culpable homicide (Sec. 304 A I.P.C. and Sec. 5 of the Indian Motor Vehicles Act, 1914).

3. The Sub Divisional Magistrate relied completely on

the evidence of P.W.5 and D.W.1 and acquitted the accused, totally discarding the probabilities of the case and the evidence of P.W.3, the Motor Vehicles Inspector. This witness had inspected the place of occurrence and examined the bus the same day soon after the collision. He was examined as an expert witness and his opinion was not shaken in cross-examination. I invite attention to paragraph 8 of the judgment in which the Sub Divisional Magistrate seems to accept the statement of the driver (accused) that he was driving at a low speed until the deceased cleared the way by swerving to the right. The time that elapses between the swerving to the right' of the deceased and the actual collision could have been only a few seconds and the amount of acceleration in that period in a heavy bus fully loaded or very nearly so is negligible. It appears to me, therefore, that the appreciation of evidence in this case by the Sub Divisional Magistrate was faulty, and that as a result there has been miscarriage of justice. I consider, therefore, that an appeal should be filed against the acquittal in this case.

For District Magistrate
6/6.

6-6-36.

9/9/36 9/9/36 +d 10/9/36.

Endt 1146 C-1 Home Dept
9.6.36.

Criminal Appeal Appeal against the acquittal of Accused in C.C. No. 3 of 1936 on the file of the Sub Divisional Magistrate, Coondapoor Letter from the D.M. South Kanara, No Ref C.1-1624-M-36 dated 8/6/36

—

Referred to the P.P. Madras for opinion as to the advisability of filing an appeal against the acquittal of the accused in C No 3 of 1936 of the file of the Sub-Divisional Magistrate, Coondapoor He is requested to forward his opinion at an early date

8.6.36 8/6

8/6

Note. Date of judgment 30/3/36

expiry of the usual period of 3 months } 29/6/36

9.6.36 8/6

The P.P. Madras (with pp 1-14 CF in original to be returned with reply)

Cmt by Vam Act Messenger

Opr.'s initials.

Date 10.6.1936

16

C.F. 30.

JUDICIAL **DEPARTMENT.**

Home 57 G

Received 17 JUN 1936 19 . *Registered* 19 19/6/36

Subject.

Criminal appeals - appeal against acquittal of accused in C.C.No. 3 of 1936 on the file of the Sub Divisional Magistrate, Coondapoor - Home Dept. Endt. No. 1146 E-1, dated 9-6-1036-- Forwarding Opinion.

19 JUN 1936

ENCLOSURES.

No.

Spare copies

Opinion No.39/36.

Station Madras, *Dated the* 15th June 1936.

From (Name) L.H.Bewes Esq.,

(Designation) Public Prosecutor.

To The Secretary to the Government of Madras,

Home Department.

Sir,

With reference to Endorsement No. 1146 E-1, Home Department, dated the 9th June 1936, I have the honour to forward herewith my opinion in the matter.

The papers received for reference are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

L. Bewes.

Public Prosecutor.

TSR/15-6-36.

Endorsement No. 1146 E-1, dated Home, dated 9-6-1936.

Opinion.

The accused, Pakeer Sahib, a motor driver, was charged for offences under section 304 (A) I.P.C. and section 5, Motor Vehicles Act 1914 for causing the death of an old woman aged 70 by rash and negligent driving. The learned Magistrate after reviewing the entire evidence found the accused not guilty and acquitted him.

It is purely a question of appreciation of evidence in this case. The learned Magistrate has believed the evidence of P.W.5 and D.Ws. 1 and 2. Of these P.W.5 and D.W.1 were two of the passengers in the bus at the time of the accident. It happened in front of D.W. 2's house which is only at a few yards' distance of the deceased's house. It appears from the evidence that the deceased was deaf and insane.

The evidence of P.W. 3 the expert witness, (Motor Inspector) is to the effect that the bus was a new one and in perfectly good working order. If the bus was running at the ordinary speed of 18 miles per hour the accused should have been able to stop it at a distance of 20 feet from the scene of occurrence. On the other hand it had gone 63 feet. This, according to P.W.3, shows that the bus was running at a speed of not less than 30 miles per hour. This is no doubt good theorising. But there may be many good reasons as to why the bus went some more distance forward and the learned Magistrate has considered

this point. On this alone it is unsafe to find the accused guilty. On the other hand the evidence of P.W.5 and D.W.1 is to the effect that the bus was proceeding ata moderate speed of 15 miles an hour and that the accused tried his best to avoid the accident. The medical evidence is to the effect that even with a moderately forcible impact the injuries to the deceased could have been caused. I am unable to say that the appreciation of evidence by the learned Magistrate is wrong.

Considering all these I do not advise an appeal against the acquittal in this case.

L. H. Bass

Madras, 15-6-1936. Public Prosecutor.

TSR/15-6-36.

GOVERNMENT OF MADRAS

Law Dept. I (Genl.)-1—100—5-12-35.

26 JUN 1936 LAW DEPARTMENT

Received ——— 193 *Registered* ——— 193

Criminal Appeal

Appeal against acquittal—~~Negatived~~.

C. Case No. 3 of 1936 on the file of the Sub Divisional Magistrate, Coondapur — Declined

LAW (GENERAL) DEPARTMENT.

READ—the following papers :—

From the District Magistrate, S. Kanara, Ref C-1 No. 1624/II-36 dated 5-6-1936.

Endorsement to the Public Prosecutor, Madras, No. 1146 E1, dated 9-6-1936.

From the Public Prosecutor, Madras, Opinion No. 39/36, dated 15-6-1936.

ORDER—Mis. No. 127, dated 26.6.1936:

The Government do not consider it advisable to appeal to the High Court against the judgment of the Sub Divisional Magistrate, Coondapoor acquitting the accused in CC No. 3 of 1936 on his file.

~~(True Extract.)~~

~~for Secretary to Government~~

Enc. Register by Peon Messenger

29-6-1936

To

The District Magistrate, S. Kanara with copy of judgment pp 16-18 of cc

The Public Prosecutor, Madras.

Note:- Draft put up is with reference to the P.P's opinion in pp 16-18 of the case as all are agreed.